

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMARL MALIK TOWNSEND,

Plaintiff,

-against-

THE CITY OF NEW YORK, et ano.,

Defendants.
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19-cv-10944 (LAK)

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge*.

This is a Section 1983 action for false arrest, malicious prosecution, and denial of the right to a fair trial. Plaintiff asserts also a state law claim for allegedly false arrest on a theory of *respondeat superior*. Defendants move for partial summary judgment dismissing the malicious prosecution, fair trial, municipal liability and *respondeat superior* claims. The false arrest claim is not at issue on this motion.

Magistrate Judge Robert W. Lehrburger, in a report and recommendation filed May 18, 2022 (the “R&R”) has recommended that the *respondeat superior* and municipal liability claims against the City of New York be dismissed. Indeed, plaintiff no longer presses them. Judge Lehrburger has recommended, however, that the motion be denied with respect to the malicious prosecution and fair trial claims. The defendants object to that recommendation.

I recognize that the grand jury’s indictment of the plaintiff gave rise to a presumption of probable cause and that the presumption would be fatal to a malicious prosecution claim in the absence of one or more “plus factors” sufficient to overcome the presumption. That fact that the plaintiff has a different, and exculpatory, version of events is not sufficient. And I agree that the evidence of “plus factors” upon which the plaintiff relies here perhaps is less than overwhelming. But I agree with Magistrate Judge Lehrburger that it is sufficient to overcome the presumption. And a conclusion that the undercover officer lied to the grand jury, should the plaintiff so convince a jury, could suffice to raise a triable issue of fact as to malice.

I have considered the defendants’ other arguments but conclude that they are without sufficient merit to fault the R&R.

Accordingly, the objections to the R&R are overruled. Defendants' motion for partial summary judgment (Dkt 35) is granted to the extent that the municipal liability and *respondeat superior* claims against the City of New York are dismissed. It is denied in all other respects.

As the discovery period has concluded (Dkt 34), the parties shall file a joint pretrial order in the form required by my individual practices no later than July 5, 2022.

SO ORDERED.

Dated: June 7, 2022

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", is written over a horizontal line.

Lewis A. Kaplan
United States District Judge